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Attorneys for: Plaintiffs KAREN DI PIAZZA,  
Individually and as Mother to CORBIN JAEGER and as Personal  
Representative of the Estate of CORBIN LEE JAEGER, Deceased

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF TEXAS, LUBBOCK DIVISION**

KAREN DI PIAZZA, Individually and As  
Mother to CORBIN JAEGER and As  
Personal Representative of the Estate of  
CORBIN LEE JAEGER, Deceased,

Plaintiff,

v.

WEATHER GROUP TELEVISION, LLC  
dba THE WEATHER CHANNEL, a  
Georgia limited liability company;  
WEATHER GROUP, LLC, a Delaware  
limited liability company; CF  
ENTERTAINMENT, INC. dba  
ENTERTAINMENT STUDIOS, a California  
corporation; ENTERTAINMENT STUDIOS  
NETWORKS, INC., a California  
corporation; ENTERTAINMENT STUDIOS  
MEDIA, INC., a California corporation;  
ENTERTAINMENT STUDIOS MEDIA  
HOLDINGS, INC., a Delaware corporation;  
NBCUNIVERSAL MEDIA, LLC, a  
Delaware limited liability company; BAIN  
CAPITAL INVESTORS, LLC, a Delaware  
limited liability company; THE  
BLACKSTONE GROUP, INC., a Delaware  
corporation; TV HOLDINGS 1, LLC, a  
Delaware limited liability company; TV  
HOLDINGS 2, LLC, a Delaware limited  
liability company; TV SPINCO LLC, a

**CIVIL ACTION**

**CASE NO. 5-19CV0060-C**

**PLAINTIFF'S RESPONSE TO  
DEFENDANTS WEATHER GROUP  
TELEVISION, LLC dba THE WEATHER  
CHANNEL AND WEATHER GROUP,  
LLC'S MOTION TO ABATE**

Delaware limited liability company;  
SHEENA BITTLE as Personal  
Representative of the Estate of KELLEY  
GENE WILLIAMSON; KEITH DANIELS as  
Personal Representative of the Estate of  
RANDALL D. YARNALL,

Defendants.

**PLAINTIFF’S RESPONSE TO DEFENDANTS WEATHER GROUP TELEVISION, LLC  
dba THE WEATHER CHANNEL AND WEATHER GROUP, LLC’S MOTION TO  
ABATE**

Plaintiff KAREN DI PIAZZA, INDIVIDUALLY AND AS MOTHER TO CORBIN  
JAEGER AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF CORBIN LEE  
JAEGER, DECEASED (“Plaintiff”) respectfully requests that the Court deny Defendants  
WEATHER GROUP TELEVISION, LLC dba THE WEATHER CHANNEL AND WEATHER  
GROUP, LLC’S (“Defendants”) Motion to Abate (“Motion”).

**I. INTRODUCTION**

Defendants’ Motion should be denied as moot. Plaintiff has now amended the  
operative pleading so as to comply with Tex. Civ. Prac. & Rem. Code § 71.004. Plaintiff’s  
Third Amended Complaint (“Complaint”) now alleges her wrongful death claim is brought  
“on behalf of herself as well as for the benefit of all beneficiaries entitled to bring this  
action.” [Compl., Intro. and ¶¶ 3 and 55; *Id.*; *Texas Health Enterprises, Inc. v. Geisler*, 9  
S.W.3d 163, 169-170 (Tex. App.—Fort Worth 1999, pet. dismiss’d).]<sup>1</sup>

**II. STATEMENT OF THE CASE**

Plaintiff brought these wrongful death and survivor claims under Texas Civil  
Practice & Remedies Code sections 71.002 and 71.021 to recover damages for the death

<sup>1</sup> Cited in support of Defendants’ Motion.

1 of her son Corbin Lee Jaeger (“Jaeger”), which were directly and proximately caused by  
 2 the acts and omissions of the named Defendants.

3 Jaeger’s only heirs at the time of his demise were his divorced parents, his mother,  
 4 the Plaintiff, and his estranged father, Lawrence Edward Jaeger. Originally, Plaintiff  
 5 brought her wrongful death claim only on her behalf. Mr. Jaeger did not bring his own  
 6 wrongful death claim before the applicable statute of limitations (2 years) expired. (Tex.  
 7 Civ. Prac. & Rem. Code § 16.003.)

8  
 9 On September 20, 2019, Defendants filed their Motion, notwithstanding their  
 10 knowledge that Plaintiff and Mr. Jaeger were their deceased son’s only heirs and that any  
 11 potential wrongful death claim of Mr. Jaeger was time-barred. (App. to Motion, Ex. “A” and  
 12 Ex. “B.”) [*McPeak-Torres v. Brazoria County Texas*, No. CV G-12-075, 2015 WL  
 13 12748276, at 2 (S.D. Tex. Jan. 22. 2015).]

14  
 15 Plaintiff intended to oppose the Motion because she maintained that the then  
 16 operative pleading (Second Amended Complaint) satisfied section 71.004’s pleading  
 17 requirement that her wrongful death claim be brought for the benefit of all claimants  
 18 entitled to recover under the Texas Wrongful Death statute. Plaintiff is her son’s only  
 19 remaining heir entitled to recover under the statute because the only other potential  
 20 claimant, Mr. Jaeger, is time-barred from maintaining a lawsuit. [*Id.*] However, Plaintiff  
 21 was also aware of the Court’s June 4, 2019 Scheduling Order, which mandated that all  
 22 motions to join other parties and amend the pleadings be filed by 3:00 p.m. on October 1,  
 23 2019, well before Plaintiffs response to the Motion was due.

24  
 25 Consequently, Plaintiff attempted to informally resolve the matter by offering to  
 26 amend her Second Amended Complaint to allege that she was bringing her wrongful death  
 27  
 28

1 action for the benefit of all beneficiaries under the statute, as the Motion demanded, if in  
 2 return, Defendants would withdraw their Motion. Defendants' Motion demanded that  
 3 Plaintiff amend her then operative pleading as follows (which she has now done):

4  
 5 Accordingly, while it is not necessary that Plaintiff join the decedent's father,  
 6 Lawrence Edward Jaeger, in this wrongful death lawsuit, it is necessary that  
 7 Plaintiff bring her wrongful death claim "for the use of all of the  
 8 beneficiaries." *Wilson*, 22 S.W. at 579; App. Exh. C, at pp. 13-14; *see also*  
*Texas Health Enterprises, Inc. v. Geisler*, 9 S.W.3d 163, 169-170 (Tex.  
 App.—Fort Worth 1999, pet. dism'd). . . [Defs.' Motion, p. 5.]

9  
 10 Defendants refused this offer, which was made, not as a concession, but to  
 11 expedite the finalization of the operative pleading for purposes of judicial economy.  
 12 Consequently, Plaintiff chose to file a Motion for Leave to File Third Amended Complaint  
 13 ("Motion to Amend") out of an abundance of caution to preserve the opportunity to amend  
 14 in the event the Court granted Defendants' Motion. The Motion to Amend, which was filed  
 15 and served on October 1, 2019, was granted by the Court the following day, October 2,  
 16 2019.

17  
 18 Plaintiff considers the Motion now moot since the operative pleading has now been  
 19 amended exactly as Defendants requested [Compl., Intro. and ¶¶ 3 and 55] but,  
 20 Defendants again rebuffed Plaintiff's request to withdraw the Motion, thereby necessitating  
 21 this response.

22  
 23 **III. THE MOTION SHOULD BE DENIED AS MOOT BECAUSE THE ALLEGATIONS**  
 24 **OF THE COMPLAINT COMPLY WITH TEX. CIV. PRAC. & REM. CODE § 71.004.**

25 The Complaint now alleges that Plaintiff brings her wrongful death claim "*on behalf*  
 26 *of herself as well as for the benefit of all beneficiaries entitled to bring this action.*" [Compl.,  
 27 ¶ 3.] [See also, Compl., Intro. and ¶ 55.] Such pleading is consistent with the applicable

1 statutory requirement and relevant case authority. Tex. Civ. Prac. & Rem. Code § 71.004  
2 states in part:

3 (a) An action to recover damages as provided by this subchapter is for  
4 the exclusive benefit of the surviving spouse, children, and parents of the  
5 deceased.

6 (b) The surviving spouse, children, and parents of the deceased may  
7 bring the action or one or more of those individuals may bring the action for  
8 the benefit of all. [Emphasis added.]

9 [See also *Texas Health Enterprises, Inc. v. Geisler*, *supra*, 9 S.W.3d at 169-170—  
10 plaintiff's petition deemed sufficient where wrongful death action alleged to be brought on  
11 behalf of plaintiff "as well as on the behalf and for the benefit of all parties entitled to bring  
12 such causes of action ..."]. Indeed, as already pointed out above, Plaintiff has amended  
13 the operative pleading as specifically proposed by Defendants in their Motion. [Defs.'  
14 Motion, pp. 5 and 6; see also *Id.*; *Martone v. Livingston*, No. 4:13-CV-3369, 2015 WL  
15 9259089, at \*2 (S.D. Tex. Dec. 18, 2015) (both cited in Defs.' Motion).]

16  
17 Defendants may attempt to argue that Plaintiff cannot state that she brings this  
18 action for the benefit of all statutory beneficiaries entitled to bring the claim because  
19 Plaintiff's counsel may not represent Mr. Jaeger. This argument fails for several reasons.  
20 Defendants cite no legal authority for the proposition that Plaintiff must represent all  
21 statutory beneficiaries to maintain her wrongful death claim. Defendants also do not cite  
22 any legal authority for the proposition that Plaintiff must specifically name Mr. Jaeger in  
23 the Complaint in order to assert her wrongful death claim. To the contrary, Section  
24 71.004's explicit language and applicable case authority authorize that suit may be  
25 brought by Plaintiff as alleged—"on behalf of herself as well as for the benefit of all  
26 beneficiaries entitled to bring this action." [Compl., Intro. and ¶¶ 3 and 55; *Texas Health*  
27  
28

1 *Enterprises, Inc. v. Geisler, supra*, 9 S.W.3d at 169-170; *Martone, supra*, 2015 WL  
 2 9259089, at \*2] Further, “[it] is not, however, necessary for the suit to be brought with the  
 3 knowledge and consent of all the beneficiaries; it is enough that the suit appear to be  
 4 brought for their benefit.” [*Martone, supra*, 2015 WL 9259089, at \*2] To name Mr. Jaeger  
 5 as a plaintiff at this stage of the proceedings, who knowingly chose not to timely file his  
 6 claim, and is therefore time-barred, would also arguably run afoul of Rule 11 of the  
 7 Federal Rules of Civil Procedure, which prohibits the filing of an obviously meritless claim.  
 8 [Fed. R. Civ. P. 11(b)(1)(2); *Ruiz v. Guerra*, 293 S.W.3d 706, 716-717 (Tex. App. 2009)  
 9 (standing of a wrongful death beneficiary to bring a single suit on behalf of all such  
 10 beneficiaries has no bearing on whether other statutory beneficiaries’ individual claims  
 11 are barred by the statute of limitations.).]

14 Plaintiff has clearly satisfied Section 71.004’s pleading requirement that she allege  
 15 that she brings suit for the benefit of all statutory beneficiaries. Also, the purpose of  
 16 Section 71.004 is to protect a defendant from multiple suits arising out of the same death,  
 17 and in this instance, that purpose has clearly been served. Mr. Jaeger’s potential wrongful  
 18 death claim is clearly time-barred. Accordingly, Plaintiff is the sole remaining statutory  
 19 beneficiary. [*McPeak-Torres v. Texas, supra*, 2015 WL 12748276, at \*2.] To argue that  
 20 these proceedings must now be abated because Plaintiff has not specifically named Mr.  
 21 Jaeger as a party, in light of the applicable statutory and case law, relevant facts and the  
 22 allegations of the Complaint that Plaintiff brings suit for the benefit of all statutory  
 23 beneficiaries, is simply nonsensical form over substance.  
 24  
 25  
 26  
 27  
 28

1  
2 **VI. CONCLUSION AND PRAYER**

3 For the reasons stated herein, Plaintiff requests that the Court deny the Motion.  
4

5  
6 DATED: October 11, 2019

LAW OFFICES OF ROBERT A. BALL

7 By: /s/ Robert A. Ball

8 ROBERT A. BALL, SBN (CA) 00761

9 JOHN M. DONNELLY, SBN (CA) 156965

10 ADMITTED *PRO HAC VICE*

11 Plaintiffs KAREN DI PIAZZA,

12 Individually and as Natural Mother to CORBIN

13 JAEGER and as

14 Executor/Administrator/Representative of the

15 Estate of CORBIN JAEGER, DECEASED

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21  
22 DATED: October 11, 2019

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23 By: /s/ Benjamin H. Davidson, II

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27 Plaintiffs KAREN DI PIAZZA,

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**CERTIFICATE OF CONFERENCE**

I hereby certify that on the 10th day of October, 2019, I personally conferred with Richard Miller, counsel for Defendants by email, regarding Defendants' Motion to Abate ("Motion") and Plaintiff's need to file a written response to the Motion. I requested that Defendants withdraw the Motion because it was rendered moot by the Court's allowing Plaintiff to file a Third Amended Complaint, which Plaintiff believes adequately addresses the Motion's arguments that the operative pleading does not comply with Tex. Civ. Prac. & Rem. Code § 71.004's pleading requirements for wrongful death claims. In response, Attorney Miller indicated that Defendants did not agree that the Motion had been rendered moot by the filing of the Third Amended Complaint, and therefore, Defendants would not agree to withdraw the Motion. Accordingly, the parties could not reach agreement on the Motion because they disagree as to the applicable law related to this issue and Plaintiff filed this response.

/s/ John M. Donnelly  
John M. Donnelly



**CERTIFICATE OF SERVICE**

The undersign hereby certifies that he has served the above and forgoing document in accordance with applicable procedural rules, via ECF, on all counsel of record on this 11<sup>th</sup> day of October, 2019.

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